

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,

Petitioner,

v.

UNKNOWN,

Respondent.

Case No. 1:24-cv-00094-SAB-HC

ORDER TERMINATING AS MOOT
PETITIONER'S REQUEST TO
TERMINATE AND DIRECTING CLERK
OF COURT TO CLOSE CASE

(ECF No. 11)

Petitioner, a state prisoner proceeding pro se, filed in the United States District Court for the Northern District of California a “notice of independent action” pursuant to Federal Rule of Civil Procedure 60(b)(3)–(4) seeking relief from a criminal judgment out of the Kern County Superior Court. (ECF No. 1.) On January 18, 2024, the Northern District of California, construing the filing as a petition for writ of habeas corpus under 28 U.S.C. § 2254, transferred the matter to this Court. (ECF No. 5.) On April 3, 2024, the Court issued findings and recommendation recommending the petition be dismissed as an unauthorized successive petition. (ECF No. 10.)

On May 13, 2024, Petitioner filed a request to terminate the instant proceeding because the document commencing this matter was submitted inadvertently. (ECF No. 11.) Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “the plaintiff may dismiss an action

1 without a court order by filing . . . a notice of dismissal before the opposing party serves either an
2 answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal
3 under this rule requires no action on the part of the court and divests the court of jurisdiction
4 upon the filing of the notice of voluntary dismissal. See United States v. 475 Martin Lane, 545
5 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary dismissals pursuant to
6 Federal Rule of Civil Procedure 41(a)(1)(A)).

7 Here, Respondent has not served either an answer or a motion for summary judgment.
8 Thus, Petitioner’s notice of dismissal was effective upon filing and without a court order
9 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). For the sake of clarity, in light of the
10 notice of dismissal, IT IS HEREBY ORDERED that:

- 11 1. Petitioner’s request to terminate is TERMINATED as MOOT; and
- 12 2. The Clerk of the Court is DIRECTED to CLOSE the case.

13
14 IT IS SO ORDERED.

15 Dated: May 14, 2024


UNITED STATES MAGISTRATE JUDGE